

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Derek Clements, *et al.*, ) Civil Action Number: 2:22-cv-02069-RMG  
                                )  
Plaintiffs,                 )  
                                )  
vs.                         )  
                                )  
Lloyd J. Austin, III, Secretary of )  
Defense, *et al.*,             )  
                                )  
Defendants.                 )

**DEFENDANTS' RESPONSE TO PLAINTIFFS' CONSOLIDATED MOTION FOR  
RECONSIDERATION AND LEAVE TO FILE AMENDED COMPLAINT**

Defendants respectfully inform this Court of their position regarding Plaintiffs' motion for reconsideration and leave to file an amended complaint, ECF No. 28 ("Mot. for Leave to Amend"). Defendants do not oppose Plaintiffs' request for leave to file the proposed amended complaint. In doing so, Defendants reserve all defenses to the amended complaint, including—to the extent that Plaintiffs again seek to raise individualized claims—the right to move for severance.

Defendants do oppose Plaintiffs' motion for reconsideration. This Court's July 27, 2022 Order, ECF No. 22, granting Defendants' motion to sever, ECF No. 15, was correctly decided and should not be reconsidered. To the extent that Clements wishes to amend the complaint in *Clements v. Austin*, No. 2:22-cv-02069 (D.S.C.), the proper procedural avenue is for Kloster, Pokrant, and Vasiliu to voluntarily dismiss their three newly opened cases pursuant to Federal Rule of Civil Procedure 41(a), and then, with leave of the Court, be added back to the *Clements* action through the proposed amended complaint.

Counsel for Defendants contacted counsel for Plaintiffs on August 3, 2022 to clarify the terms of the amended complaint and requested that Plaintiffs confirm that the amended complaint

challenges only Defendant Secretary of Defense Lloyd Austin's August 24, 2021 Memorandum. *See Am. Compl.*, ECF No. 28-2 ¶ 41 & n.15 (citing the August 24, 2021 Memorandum); *see also* Mot. for Leave to Amend at 4 (explaining that Plaintiffs' amended complaint "reduce[s] Plaintiffs' case to a straightforward Administrative Procedure Act [] case against a single Defendant, which will require little or no individualized factual analysis or development. . . [and instead] will focus on Defendant['s] [] actions in developing and promulgating an unlawful vaccine mandate."). On August 4, 2022, Plaintiffs confirmed that the amended complaint challenges only Secretary Austin's August 24, 2021 Memorandum.

Dated: August 5, 2022

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Respectfully submitted,

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